

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONELL THOMAS HAYNIE,

Plaintiff,

v.

E. LILJOHN, Correctional Officer,

Defendant.

Case No. 1:20-cv-00457-NONE-HBK

ORDER GRANTING PLAINTIFF'S MOTION
FOR APPEARANCE OF WITNESSES

(Doc. No. 38)

Pending before the Court is Plaintiff's Motion for Appearance of Witnesses at Trial. (Doc. No. 38). Defendant has not filed an opposition to the Motion. Plaintiff is proceeding *pro se* on his civil rights complaint filed pursuant to 42 U.S.C. § 1983 alleging an excessive use of force claim against Defendant stemming from events that took place on July 4, 2017. This action, originally filed in the Sacramento Division and transferred to the Fresno Division of this Court on March 31, 2020. (Doc. No. 42). The scheduling order entered on February 13, 2020, before this action was transferred, directed the parties to file pretrial statements to include the names and incarcerated witnesses, *inter alia*, accompanied by a motion seeking their attendance at trial. (Doc. No. 36 at 2-3). The February 13, 2020 scheduling order also set the pretrial conference to be held on the file only before the assigned magistrate judge in the Sacramento Division. (Id. at 4, ¶ 3).

The parties timely filed their pretrial statements. (Doc. Nos. 38, 44). Plaintiff timely

1 moved to introduce two incarcerated witnesses. (Doc. No. 39). Plaintiff seeks the appearance of
2 two incarcerated witnesses: (1) Cosme Presas, #AY-3897, imprisoned at California State Prison
3 in Lancaster, California and (2) Charles William Dykes-Dalby, #AU4851, held at High Desert
4 State Prison in Susanville, California. (Doc. No. 38 at 1). Attached to the motion is an affidavit
5 signed by Plaintiff where he attests both individuals were eyewitnesses to the July 4, 2017
6 altercation. (*Id.* at 2). The affidavit further attests that Presas told Plaintiff he would willingly
7 testify and includes a signed affidavit from Dykes-Dalby confirming he witnessed the disputed
8 event and agrees to voluntarily testify. (*Id.* at 2-3). Plaintiff's motion satisfies the requirement to
9 provide the incarcerated witnesses' contact information and affidavits demonstrating their
10 firsthand knowledge and willingness to testify.


11 Due to the interdivision transfer of this action and the ongoing pandemic, no pretrial
12 conference nor trial date has been scheduled. A separate order will issue setting this matter for a
13 telephonic pretrial confirmation hearing before the District Court.

14 Accordingly, it is hereby **ORDERED**:

15 1. Plaintiff's Motion for Appearance of Witnesses at Trial (Doc. No. 38) is GRANTED.

16 2. Paragraph 3 of the February 13, 2020 Order (Doc. No. 36) is vacated to the extent the
17 Court will set this case for a telephonic pretrial confirmation hearing as described in Local Rule
18 282 and trial before the District Court by separate order.

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20 Dated: August 17, 2021

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22 HELENA M. BARCH-KUCHTA
23 UNITED STATES MAGISTRATE JUDGE
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